FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 72/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 13, 2007.

Heard Shri Deshpande for the appellant, and Shri Khapre for the respondent no.1.

The appellant is the original defendant no.1. A suit was filed by the respondent no.1/ plaintiff for specific performance of contract of sale of the suit property for a consideration of Rs. 40,500/- dated 7/5/1990. Sale deed was to be executed before 30/1/1991. As the appellant/ defendant no.1 was not willing to perform his part of the contract, the respondent no.1/plaintiff instituted a suit for specific performance of contract. The claim of the plaintiff was denied by the defendant no.1. According to the defendant no.1, the defendant nos. 2 and 3- the wife and the child of the defendant no.1, were also the owners of the suit property and since the defendant no. 1 was not the absolute owner thereof, suit for specific performance of contract was liable to be dismissed. It was pleaded by the defendants that the suit property was ancestral property in the hands of the defendant no.1. Therefore, the defendant no.1 alone could not

have executed an agreement of sale in favour of the plaintiff.

Initially, the suit field was owned by Shyamrao Ghatol, who received it from his wife Malanbai. Malanbai had received the suit property from her father. Since Malanbai was issueless, she had executed a Will bequeathing the suit property in favour of her husband Shyamrao. According to the plaintiff, the defendant no. 1 was the illegitimate son of Shyamrao through one Zamaribai who was his keep. According to the plaintiff, the property was received by the defendant no.1 after the death of Shyamrao as he had left behind no legal heirs.

Both the Courts decreed the suit filed by the plaintiff for grant of specific performance of contract. The Courts concurrently held that the defendant no.1 had executed the agreement for sale on 7/5/1990 and the plaintiff was ever ready and willing to perform his part of the contract. Though the trial Court held that the suit property was an ancestral property, the appellate Court reversed the findings and held that the suit property was not the ancestral property so far as the defendant no.1 was concerned. According to the appellate Court, the defendant no.1 had no right to inherit the suit property and the suit property merely came to him on the death of Shyamrao, as Shyamrao had left no legal heir behind him. The appellate Court recorded a categorical finding that the defendant no.1 being an illegitimate son of Shyamrao, was not entitled to any right of inheritance during the life time of

Shyamrao. Apart from the reversal of the finding to the aforesaid effect, the appellate Court upheld the findings recorded by the trial Court and dismissed the appeal filed by the defendants. The Courts did not accept the plea of the defendants that the suit transaction was an unsustainable bargain.

There is no error whatsoever in the approach of the appellate Court in holding that the suit property was not the ancestral property in the hands of the defendant no.1. The appellate Court had rightly recorded that the defendant no.1 had no right of inheritance to the suit property as he was an illegitimate son of Shyamrao born through one Zamaribai who was his keep. The findings recorded by the appellate Court are just and proper.

The judgments reported in **AIR 1961 Supreme Court 1334** and **AIR 1992 Andhra Pradesh 254** cannot be made applicable to the facts of this case and are of no assistance to the case of the appellant.

All the other findings recorded by both the Courts are clear findings of facts which do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP